

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Mailed:
June 30, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Vector Products, Inc.

Serial No. 76514374

George W. Lewis of Jacobson Holman PLLC for Vector
Products, Inc.

Roberto Ledesma, Trademark Examining Attorney, Law Office
113 (Odette Bonnet, Managing Attorney).

Before Seeherman, Holtzman and Kuhlke, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Vector Products, Inc. has appealed from the final
refusal of the Trademark Examining Attorney to register
JUMP'N CHARGE, in standard character form, as a trademark
for "jump starter and automotive battery chargers, sold as
a unit."¹ Registration has been refused pursuant to Section

¹ Application Serial No. 76514374, filed May 15, 2003. The
application was originally based on Section 1(b) of the Trademark
Act (intention to use). Applicant subsequently filed an
amendment to allege use asserting first use anywhere and first

2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive of its identified goods.

The appeal has been fully briefed. Applicant did not request an oral hearing.

A term is merely descriptive of goods or services, and therefore prohibited from registration by Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in

use in commerce at least as early as February 3, 2004. The drawing of the mark in the application as originally filed depicted the mark as JUMP N CHARGE, and the mark was in this form throughout the examination/prosecution of the application, including the filing of the notice of appeal. Subsequent to the filing of the notice of appeal applicant submitted its Amendment to Allege Use. The Examining Attorney noted that the specimen accompanying the AAU showed the mark as JUMP'N CHARGE, and required that applicant submit a new drawing of the mark which agreed with the specimen but did not materially alter the mark. Applicant thereupon submitted an amended drawing showing the mark as JUMP'N CHARGE. This amendment was accepted by the Examining Attorney, thereby indicating that JUMP'N CHARGE and JUMP N CHARGE are substantially the same, and convey the same commercial impression.

connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. That a term may have other meanings in different contexts is not controlling. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

It is the Examining Attorney's position that applicant's mark is merely descriptive of its goods because the individual words merely describe the purpose and function of applicant's goods, and when combined the mark retains its merely descriptive significance. In support of this position, the Examining Attorney has submitted dictionary definitions² of "jump" as meaning "to jump-start (a motor vehicle)" and of "charge" as meaning "to energize (a storage battery) by passing current through it in the direction opposite to discharge." The Examining Attorney has also requested that we take judicial notice that "N" is defined as a "contraction of and," a request that we hereby grant.³

² The definitions were taken from The American Heritage Dictionary of the English Language, 3d ed. © 1992.

³ The American Heritage Dictionary of the English Language, 4th ed. © 2000. The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

In addition, the Examining Attorney has submitted excerpts from articles taken from the NEXIS database and from Internet webpages in which the term "jump" or "charge" is used to refer to starting and charging an automotive battery, including the following (emphasis added):

Every person who is issued a driver's license should know how to change a tire, check the oil, check the water level in the radiator and **jump** a battery....

"Akron Beacon Journal," June 12, 2004

If your car battery dies and you **jump** it, you do not have to keep the car running in order for the alternator to recharge the battery.

"The News-Press" (Fort Myers, FL),
December 13, 2003

Culpepper had plenty of company while he waited for someone to come and **jump** the very special battery in his car.

"Star Tribune" (Minneapolis, MN),
September 21, 2003

...an Alexandria man who was helping him **jump** his car's battery....

"The News-Star" (Monroe, LA), July 23,
2003

Now with the batteries connected, let the strong [sic] car run for awhile, possibly as long as five minutes to **charge** the dead battery.

"Contra Costa Times" (CA), November 14,
2003

Car Battery Charger

The charger will quickly and easily **charge** most any lead acid battery. The charger delivers a full current....

www.aaroncake.net

Definition of "battery charger"
1. [n] a device for **charging** or
recharging batteries.
<http://lookwayup.com>

We also note that applicant has identified its goods as a "jump starter" and "automotive battery charger," and that the specimen submitted by applicant with its Amendment to Allege Use states that the goods are a battery charger and a jump-starter.

In view of the foregoing, we have no doubt that the elements "jump" and "charge" in applicant's mark are merely descriptive of significant characteristics of applicant's goods, namely that two purposes or functions of the goods are to jump start and to charge an automotive battery.

Applicant has submitted the declaration of Robert L. Powell, Jr., its general counsel. Mr. Powell has stated that "the term 'jump' alone is not generally used to refer to the act of starting a car (the accepted terminology being 'jump start')." ¶8. However, the excerpts from the articles reported above show that the public does, in fact, use "jump" as an alternative to the term "jump start." Mr. Powell has also stated that "the term 'jump' as employed in the mark of the instant application is NOT intended to refer to the act of 'jumping' an automobile battery." ¶9. Whatever applicant's intentions might have been, it is the

perception of the consuming public that we must consider in determining whether a term is merely descriptive. As we stated above, the evidence demonstrates that the public would view "jump" in applicant's mark, which is used for a "jump starter and automotive battery charger, sold as a unit," as referring to a jump starter.

When these two merely descriptive terms JUMP and CHARGE are combined in the mark JUMP'N CHARGE, the individual words retain their merely descriptive character, and the mark as a whole is also merely descriptive. There is, of course, no question that "'N" is a recognized abbreviation or alternative to the word "AND." Thus, the mark immediately tells consumers of two significant functions of applicant's goods: that applicant's jump starter and battery charger can be used to jump start a car and to charge the battery.

Applicant has pointed out that a mark comprising a combination of merely descriptive components is registrable if the combination of terms creates a unitary mark with a unique, nondescriptive meaning. Relying on this principle, applicant has argued that JUMP'N CHARGE is a double entendre, that refers both to the jump starter and battery charger functions of the goods, "but it also conveys an image of an enthusiastic consumer." Brief, p. 5. We are

not persuaded by this argument. To qualify as a double entendre, the second meaning must be readily apparent. See, for example, *In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (SUGAR & SPICE is a phrase from a familiar nursery rhyme); *Blisscraft of Hollywood v. United Plastics Co.*, 294 F.2d 694, 131 USPQ 55 (2d Cir. 1961) (POLY PITCHER suggests the Revolutionary War figure Molly Pitcher). To put it kindly, we find it unlikely that consumers would readily understand JUMP'N CHARGE as the depiction of an enthusiastic consumer. Therefore, it cannot be considered a double entendre. On the contrary, the single meaning conveyed by the mark, as used in connection with a "jump starter and automotive battery, charger sold as a unit," is that the product both jump starts and charges a battery. As such, it is merely descriptive of applicant's goods.

Decision: The refusal of registration is affirmed.